

1 E. MARTIN ESTRADA  
United States Attorney  
2 DAVID M. HARRIS  
Assistant United States Attorney  
3 Chief, Civil Division  
JOANNE S. OSINOFF  
4 Assistant United States Attorney  
Chief, Complex and Defensive Litigation Section  
5 JOSEPH W. TURSI (Cal. Bar No. 300063)  
JASON K. AXE (Cal. Bar No. 187101)  
6 Assistant United States Attorneys  
Federal Building, Suite 7516  
7 300 North Los Angeles Street  
Los Angeles, California 90012  
8 Telephone: (213) 894-3989 | 8790  
Facsimile: (213) 894-7819  
9 E-mail: Joseph.Tursi@usdoj.gov  
Jason.Axe@usdoj.gov

10 Attorneys for Defendants

11  
12 UNITED STATES DISTRICT COURT  
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
14

15 AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION OF  
16 SOUTHERN CALIFORNIA,  
17 Plaintiff,  
18 v.  
19 UNITED STATES IMMIGRATION  
AND CUSTOMS ENFORCEMENT, et  
20 al.  
21 Defendants.

No. 2:22-cv-04760-SHK

**DECLARATION OF CATRINA M.  
PAVLIK-KEENAN**

Honorable Shashi H. Kewalramani  
United States Magistrate Judge

1 I, Catrina M. Pavlik-Keenan, pursuant to 28 U.S.C. § 1746, hereby declare as  
2 follows:

3 1. I am the Deputy Chief Freedom of Information Act (“FOIA”) Officer for  
4 the Department of Homeland Security (“DHS”) Privacy Office (“Privacy Office” or  
5 “DHS-PRIV”).

6 2. In this capacity, I am the DHS official responsible for implementing FOIA  
7 policy across DHS and responding to requests for records under the FOIA, 5 U.S.C. §  
8 552, the Privacy Act, 5 U.S.C. § 552a, and other applicable records access provisions. I  
9 have been employed by the DHS Privacy Office in this capacity since July 4, 2021. Prior  
10 to holding that position, I worked for approximately four years in the FOIA office at the  
11 Transportation Security Administration - first as a Supervisory FOIA Analyst, then as  
12 Deputy Director for two years, and finally as Director.

13 3. I make this declaration in support of Defendant DHS’s Motion for  
14 Summary Judgment and Opposition to Plaintiff’s Motion for Summary Judgment. The  
15 statements contained in this declaration are based upon my personal knowledge, my  
16 review of the documents kept by the DHS-PRIV in the ordinary course of business, and  
17 information provided to me by other DHS Headquarters (“DHS-HQ”) employees in the  
18 course of my official duties.

19 4. Through the exercise of my official duties, I am familiar with DHS-PRIV’s  
20 receipt and handling of the nine-part FOIA request dated April 29, 2022 (the “FOIA  
21 Request”) submitted by the American Civil Liberties Union of Southern California  
22 (“SoCal ACLU” or “Plaintiff”), and the steps taken to respond to the FOIA Request, to  
23 include the determination that the United States Immigration and Customs Enforcement  
24 (ICE) and Office of Inspector General (OIG) were the appropriate components in receipt  
25 of the request.

## 26 **I. DHS FOIA PROCESS**

27 5. Section 5.1(c) of DHS’s FOIA regulations provides that “DHS has a  
28 decentralized system for processing FOIA requests, with each component handling

1 requests for its records.” 6 C.F.R. § 5.1(c). Accordingly, and except for the  
2 Cybersecurity and Infrastructure Security Agency (“CISA”), DHS-PRIV does not  
3 respond to or process FOIA requests on behalf of other operational DHS components.

4 6. DHS-PRIV receives and processes FOIA requests for the following DHS-  
5 HQ Offices only: Office of the Executive Secretary, Management Directorate, Office of  
6 Strategy, Policy, and Plans, Office of Operations Coordination, Office of Partnership and  
7 Engagement, Privacy Office, Center for Prevention Programs and Partnerships, Office of  
8 the General Counsel, Office of Legislative Affairs, Office of Public Affairs, Office of the  
9 Citizenship and Immigration Services Ombudsman, Office of the Immigration Detention  
10 Ombudsman, Office of the Secretary, and Office of Biometric Identity Management  
11 (“OBIM”). Additionally, as indicated in Paragraph 5 above, DHS-PRIV, in accordance  
12 with an internal agreement, receives and processes FOIA requests for operational  
13 component CISA.

14 7. The DHS FOIA regulations, available at  
15 [https://www.dhs.gov/publication/federal-register-notice-freedom-information-act-and-](https://www.dhs.gov/publication/federal-register-notice-freedom-information-act-and-privacy-act-procedures-interim-final)  
16 [privacy-act-procedures-interim-final](https://www.dhs.gov/publication/federal-register-notice-freedom-information-act-and-privacy-act-procedures-interim-final), set out the steps for a FOIA requester to submit a  
17 FOIA request to DHS-HQ Offices as well as all DHS components. The DHS FOIA  
18 regulations also describe how DHS handles referrals to other agencies and to other DHS  
19 components.

20 8. Section 5.1(a)(1) of the DHS FOIA regulations states that “[t]his subpart  
21 contains the rules that the Department of Homeland Security follows in processing  
22 requests for records under the Freedom of Information Act.”

23 9. Section 5.3(b) of the DHS FOIA regulations states: “Requesters must  
24 describe the records sought in sufficient detail to enable DHS personnel to locate them  
25 with a reasonable amount of effort. A reasonable description contains sufficient  
26 information to permit an organized, non-random search for the record based on the  
27 component’s filing arrangements and existing retrieval systems. To the extent possible,  
28 requesters should include specific information that may assist a component in identifying

1 the requested records, such as the date, title or name, author, recipient, subject matter of  
2 the record, case number, file designation, or reference number.” 6 C.F.R. § 5.3(b).

3 10. Section 5.3(a)(2) of the DHS FOIA regulations states that the “Privacy  
4 Office will forward the request to the component(s) that it determines to be the most  
5 likely to maintain the records that are sought” and that all referrals are to be handled  
6 consistent with subsection 5.4(d)(3), that is “the component may refer the responsibility  
7 for responding to the request or portion of the request to the component or agency best  
8 able to determine whether to disclose the relevant records, or to the agency that created  
9 or initially acquired the record as long as that agency is subject to the FOIA. Ordinarily,  
10 the component or agency that created or initially acquired the record will be presumed to  
11 be best able to make the disclosure determination. The referring component shall  
12 document the referral and maintain a copy of the records that it refers.”

## 13 **II. FACTUAL BACKGROUND**

14 11. The FOIA Request, which was dated April 29, 2022, sent via email, was  
15 received by DHS-PRIV on May 2, 2022, and stated in pertinent part:

### 16 **“REQUEST FOR INFORMATION**

17  
18 “The Requestor seeks any and all records that were prepared, received,  
19 transmitted, collected, and/or maintained by Immigration and Customs  
20 Enforcement (“ICE”) or the Department of Homeland Security that describe, refer,  
21 or relate to the release of hospitalized detainees from custody prior to their death;  
22 any records related to release of individual detainees once hospitalized; and any  
23 records related to the death of such detainees after their release from custody,  
including any communications or investigations. Unless otherwise noted, we  
request the records specified below from January 1, 2016 to the present...”

### 24 **“SPECIFIC RECORDS REQUESTED**

25  
26 1. Any and all documents, without limitation to date, including any  
27 communications, investigatory reports, and any and all exhibits, appendices, or  
28 attachments thereto, relating to the hospitalization, death, decision to release from  
custody, or release from custody of the following individuals.

1 2. Any and all DHS OIG reports of investigation that are identified in any of the  
2 records responsive to Request #1. This includes any and all exhibits, appendices,  
3 or attachments to the DHS OIG reports of investigation.

4 3. Any and all ICE OPR reports of investigation that are identified in any of the  
5 records responsive to Request #1. This includes any and all exhibits, appendices,  
6 or attachments to the DHS OPR reports of investigation.

7 4. Any and all documents and communications, including ICE and IHSC  
8 directives, policies, procedures, protocols, or trainings that contain guidance,  
9 instructions, or standards about the release from custody of (a) hospitalized  
10 detainees; or (b) detainees who at the time of release were patients in the care of  
11 external healthcare providers or facilities. Detainees specified in (a) and (b) above  
12 shall include those being treated for COVID-19 during their hospitalization or  
13 treatment at external healthcare providers or facilities.

14 5. Spreadsheets, emails, documents, communications, databases, lists, and other  
15 data compilations in the possession of ICE Leadership, ICE Enforcement and  
16 Removal Operations, ICE Health Service Corps, and ICE Office of Professional  
17 Responsibility that identify detainees who were released from custody while (a)  
18 hospitalized (including for COVID-19 treatment); (b) in the full-time care of  
19 external healthcare providers or facilities (including for COVID-19 treatment), or  
20 (c) released from custody immediately prior to transfer to an emergency room,  
21 hospital, or external care facility. Requested materials include, but are not limited  
22 to, dates of hospitalization of detainees, dates of hospital or external care facility  
23 discharge, name of treated detainees' detention facilities, and reasons for  
24 detainees' hospitalization or external medical care. These materials should further  
25 include Medical Transfer Summary documents from DHS's eHR System and  
26 Alien Medical Records System, and any versions of the Significant Detainee  
27 Illness Spreadsheet that identify detainees who were released from custody while  
28 (a) hospitalized (including for COVID-19 treatment); (b) in the care of external  
healthcare providers or facilities (including for COVID-19 treatment); or (c)  
released from custody immediately prior to transfer to an emergency room,  
hospital, or external care facility.

6. Spreadsheets, emails, significant incident reports (SIRs), significant event  
notification reports (SENs), or documents created by DHS OIG or ICE OPR that  
mention the release from custody of (a) hospitalized detainees; (b) detainees who  
at the time of release were patients in the care of external healthcare providers or  
facilities; or (c) detainees released from custody immediately prior to transfer to  
an emergency room, hospital, or external care facility.

1  
2 7. Spreadsheets, emails, SIRs, SENs, or documents created by DHS OIG or ICE  
3 OPR that mention the death of any detainee who had been previously released  
4 from custody while (a) hospitalized; or (b) a patient in the care of an external  
5 healthcare provider or facility; or (c) released from custody immediately prior to  
6 transfer to an emergency room, hospital, or external care facility.

7 8. Any and all documents, communications, and other records, including  
8 databases, spreadsheets, lists, and other data compilations, that identify detainees  
9 who were hospitalized or transferred from detention for off-site medical care due  
10 to COVID-19, and were subsequently released from custody while hospitalized, or  
11 detainees who were released from custody immediately prior to transfer to an  
12 emergency room, hospital, or external care facility to receive treatment for  
13 COVID-19. Requested information includes, but is not limited to, dates of  
14 hospitalization, detention facility, medical condition/reason for hospitalization or  
15 treatment, name and location of hospital, date of return to detention (if any), date  
16 of release from custody or issuance of order of recognizance (if any), and/or  
17 reason for release from custody.

18 9. Bills, invoices, charges, or records of payment that reflect payments made for  
19 healthcare for any detainee who was released from custody while (a) hospitalized;  
20 or (b) a patient in the care of an external healthcare provider or facility, and  
21 communications about such bills, invoices, charges, or records of payment.”

22 The FOIA Request also contained a spreadsheet that provided the names for  
23 specific individuals, their country of origin, their approximate date of death, the ICE  
24 detention facilities held in prior to hospitalization and death, and the location of death for  
25 each listed individual.

26 12. DHS-PRIV carefully reviewed the FOIA Request, and in accordance with DHS  
27 regulations determined that ICE and OIG were the DHS components “most likely” to  
28 maintain responsive records. *See* 6 C.F.R. § 5.3(a)(2). On May 18, 2022, DHS-PRIV  
provided Plaintiff with a final response in which DHS-PRIV acknowledged receipt of  
the FOIA request and notified Plaintiff of its determination that “the records sought,  
should they exist, would not be under purview of the DHS Privacy Office. Any  
responsive records would be held by the DHS Office of the Inspector General (OIG)  
and/or U.S. Immigration and Customs Enforcement (ICE).” A true and correct copy of



1 DHS-PRIV's May 18, 2022, correspondence is attached hereto as Exhibit 1. The  
2 notification explained that "As you have already submitted your request to the  
3 aforementioned office[s], we are closing your Privacy Office request and will defer to  
4 the OIG and ICE's response(s). We have included contact information for the OIG and  
5 ICE FOIA offices below for your convenience." *Id.*

6 13. Having properly determined that responsive records, should they exist,  
7 would most likely be held by OIG and/or ICE, and with the understanding that Plaintiff  
8 had already submitted its request to those offices, DHS-PRIV administratively closed  
9 this case on May 18, 2022, with no further action. At no time prior to administratively  
10 closing the FOIA Request did DHS-PRIV process the FOIA Request or supervise the  
11 processing of the FOIA Request by the referred components. Nor does DHS-PRIV have  
12 an ongoing obligation to supervise another component's processing of a FOIA request  
13 directed or referred to it.

14 14. After receiving DHS-PRIV's May 18, 2022 letter, Plaintiff did not object to  
15 DHS-PRIV's final determination that DHS-OIG and ICE would be the appropriate  
16 components to process the request, nor did Plaintiff object to DHS-PRIV's notification  
17 that it would administratively close the request. Thus, DHS-PRIV properly determined  
18 that its obligations to respond to the FOIA Request had terminated.

19 15. On January 24, 2023, Plaintiff, in email correspondence with defense  
20 counsel in this litigation, indicated that it did not consider the May 18, 2022 letter "...by  
21 *itself an adequate response to our request. However, we will hold off on potentially*  
22 *seeking a separate search from DHS HQ until after we have reviewed additional*  
23 *productions from ICE and OIG.*" This letter did not trigger an obligation by DHS-PRIV  
24 to do anything further with respect to the FOIA Request because DHS-PRIV had already  
25 referred the FOIA Request to ICE and OIG and had administratively closed the request.  
26 Attached hereto as Exhibit 2 is a true and correct copy of Plaintiff's January 24, 2023  
27 correspondence.

28 16. On December 13, 2023, in a letter sent to defense counsel, Plaintiff

1 requested that DHS-PRIV conduct a search and direct other DHS components and  
2 subcomponents to conduct searches. Plaintiff justified its demand for a search by  
3 pointing to records referred by DHS-OIG to other DHS components, claiming that such  
4 referrals required DHS to "...follow this "clear and certain" lead and search those  
5 components..." (Plaintiff's letter to AUSA dated Dec 13, 2023). Attached hereto as  
6 Exhibit 3 is a true and correct copy of Plaintiff's letter dated December 13, 2023. As of  
7 the date of the December 13, 2023 letter, the FOIA Request had already been  
8 administratively closed by DHS-PRIV for over a year.

9 17. On March 1, 2024, Plaintiff filed its Motion for Summary Judgment (MSJ).  
10 In its MSJ, Plaintiff states that DHS-OIG produced two documents that require DHS-  
11 PRIV to conduct a search. The first document is a letter "...sent to DHS by legal service  
12 providers representing detained immigrants as part of the National Qualified  
13 Representative Program ("NQRP")." *See* Dkt. 67 at 33. This letter, according to  
14 Plaintiff's MSJ, was produced by DHS-OIG after it referred the record to DHS-PRIV for  
15 consultation. The second document is a "...4-page Case Summary Report indicating that  
16 DHS-OIG and other DHS components had open investigations related to the letter." *Id.*  
17 Plaintiff claims that these two documents, produced by DHS-OIG, should have  
18 prompted DHS-PRIV to search "...the components to which NQPR providers sent the  
19 letter, including CRCL."

20 18. First, DHS-PRIV was not involved in, nor had knowledge about, the  
21 searches conducted by DHS-OIG or the production of records by DHS-OIG to Plaintiff  
22 because DHS-PRIV did not take any action to supervise or coordinate the search  
23 conducted by DHS-OIG. Second, the July 6, 2023 consultation by DHS-PRIV of  
24 documents referred to it by DHS-OIG happened after the administrative closure by  
25 DHS-PRIV of the FOIA Request.

26 19. Consultation of a record occurs when one component or agency, while  
27 processing records, determines that a record considered for production may contain  
28 equities or information belonging to another component or agency. The component or



1 agency receiving a request for consultation would review the document to ensure that its  
2 equities were properly treated or protected in accordance with the FOIA. DHS-PRIV  
3 does not review consultations received from other agencies or components and then  
4 cross references them against past received FOIA requests. To do so would be  
5 unreasonable and not feasible. Consultations are tracked differently than FOIA requests.

6 20. DHS has a decentralized system for processing FOIA requests, which  
7 means that most DHS components are independently responsible for handling and  
8 processing requests for their records. 6 C.F.R. § 5.1(c).

9 21. As previously highlighted, and in accordance with Section 5.3(a)(2) of the  
10 DHS FOIA regulations, DHS-PRIV carefully reviewed the FOIA Request and  
11 reasonably determined that any potentially responsive records would likely be under the  
12 purview of DHS-OIG or ICE. Nothing within the four corners of the FOIA Request  
13 suggested to DHS-PRIV that CRCL *may* have had responsive records.

14 I declare under penalty of perjury that the foregoing is true and correct to the best  
15 of my knowledge and belief. Signed this 10<sup>th</sup> day of April 2024.

16  
17  
18 \_\_\_\_\_  
19 Catrina M. Pavlik-Keenan  
20 Deputy Chief FOIA Officer  
21 Privacy Office  
22 U.S. Department of Homeland Security  
23  
24  
25  
26  
27  
28